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No. 92-1033

In the Supreme Court of the United States

OCTOBER TERM, 1992

DAVID JAMES TEMPLETON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Indiana statute of limitations for commencing actions to set aside fraudulent conveyances bars this suit by the United States to enforce its tax assessment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C1-C2) is unpublished, but the decision is noted at 972 F.2d 352 (Table). The opinion of the district court (Pet. App. A1-A35) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on August 10, 1992. Petitions for rehearing were denied on August 31, 1992, and September 22, 1992 (Pet. App. D1). The petition for a writ of certiorari was filed on December 15, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On April 15, 1980, petitioners David James and Rachel Templeton filed a timely joint federal income tax return for 1979 (Pet. App. A4). In November of 1982, the Templetons transferred title in their residence to the trustees of the Seven Eighteen Trust (*id.* at A2-A3). The document purporting to create the Seven Eighteen Trust, and evidencing the transfer of the residence, was two pages in length. It named no beneficiaries and described the consideration for the transfer of the Templetons' residence as one dollar and "other valuable consideration" (*id.* at A3). The Templetons continued to reside on the property following the transfer and to pay the utility bills (*id.* at A2).

2. On April 25, 1984, the Internal Revenue Service made an assessment in the amount of $74,772 against the Templetons for their 1979 income tax liability (Pet. App. A5-A6; Gov't C.A. Br. 4). Despite notice and demand for payment, the Templetons refused to pay the assessment (Pet. App. A5). On April 20, 1989, the United States filed suit to reduce the assessment to judgment, to set aside the conveyance of the residence and to foreclose its federal tax lien on the property (*id.* at A5-A6; Gov't C.A. Br. 4). The government contended that the Templetons remained the owners of the residence because the purported transfer to the trust was ineffective. The transfer was ineffective either (i) because no valid trust had been created or (ii) because the transfer to the trust was a fraudulent conveyance (*ibid.*).

The Templetons moved to dismiss the government's complaint, claiming that the government failed to make a valid assessment against them (Pet. App. A7). One of the trustees of the Seven Eighteen Trust, petitioner Michael Venegoni, also filed a motion to dismiss, alleging that the district court lacked jurisdiction to void a

contract made in Indiana and that the Indiana statute of limitations on actions alleging fraud barred the government's fraudulent conveyance claim (*id.* at A9).

The district court granted summary judgment to the United States. The court held that the Templetons were the owners of the residence because no valid trust had been created and, alternatively, because the transfer was a fraudulent conveyance (Pet. App. A34-A35). The court rejected the Templetons' contention that the IRS failed to make a valid assessment against them, finding that the government had established a prima facie case and that the Templetons failed to rebut the resulting presumption of liability (*id.* at A9-A12).

The court emphasized that the trust documents in the record failed to satisfy two of the requirements under Indiana law for forming a valid trust: (i) the documents failed to list the valuable consideration exchanged for the transfer of the residence and (ii) the documents failed to list any beneficiary of the trust (Pet. App. A26). While stating that these omissions might not alone compel invalidation of the trust, the court held that the significant evidence of fraud in the execution of the trust compelled the court to invalidate the trust pursuant to its equitable powers (*id.* at A27-A28). The court noted several badges of fraud in the formation of the purported trust: the Templetons transferred the property during the time the IRS was in the process of investigating their 1979 tax return (*id.* at A31), they continued to reside at the residence after the transfer, paying the utility bills for the property (*id.* at A32), they owned no other real estate or other significant property when the trust was established (*id.* at A32-A33), no meaningful consideration was exchanged for the property (*id.* at A32), and no beneficiaries were designated in the trust instrument (*ibid.*).

The court further concluded that the fraud engaged in by petitioners made the conveyance of the residence to

the trust void as in fraud of creditors under Indiana's fraudulent conveyance statute, Ind. Code Ann. § 32-2-1-14 (Burns 1980) (Pet. App. A31). In so ruling, the court rejected the trustee's claim that the Indiana statute of limitations, which provides a six-year limitations period on actions alleging fraud, barred the government's suit. The court concluded that, while federal courts are to apply state substantive law in actions to set aside a fraudulent conveyance and foreclose on a tax lien, the claim of the United States to enforce its tax assessment against the Templetons is subject to the applicable federal, not state, statute of limitations (*id.* at A18-A19).[1]

3. The court of appeals affirmed "for the reasons stated in the district court's thorough opinion" (Pet. App. C2).

ARGUMENT

The courts below correctly held that the United States could foreclose its lien on the taxpayers' residence because the conveyance of that property to the trust was ineffective. The decision in this case does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore not warranted.

1. Because the taxpayers purportedly conveyed their residence to the trust more than six years before the govenment filed this suit to enforce its tax assessment, petitioners claim (Pet. 16-24) that this action is barred by Indiana's six-year statute of limitations for actions challenging fraudulent conveyances (see Ind. Code Ann.

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[1] The district court also rejected the trustee's argument that the United States Constitution and the Indiana Constitution prohibited federal courts from voiding fraudulent conveyances based on contracts made in Indiana (Pet. App. A16).

§ 34-1-2-1 (Burns 1986)). Petitioners' contention is incorrect.[2]

The United States brought this tax collection suit under authority conferred by Congress in the Internal Revenue Code. The Code provides a specific statute of limitations for suits brought by the United States to enforce tax assessments. 26 U.S.C. 6502(a). It has long been established that suits brought by the United States to enforce federal rights are subject only to federal, not state, statutes of limitations. See, *e.g.*, *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940); *United States* v. *Wurdemann*, 663 F.2d 50, 51 (8th Cir. 1981); *United States* v. *Fernon*, 640 F.2d 609, 612 (5th Cir. 1981).

Section 6321 of the Internal Revenue Code creates a tax lien in favor of the United States "upon all property and rights to property" belonging to a delinquent taxpayer. 26 U.S.C. 6321. This federal tax lien, which arises upon assessment, continues in effect until the liability is satisfied or the lien becomes unenforceable by lapse of time. 26 U.S.C. 6322. The Internal Revenue Code authorizes the United States to bring suit "in a district court of the United States to enforce the lien of the United States" (26 U.S.C. 7403) by a proceeding commenced at any time within six years of the date of the assessment (26 U.S.C. 6502(a)).[3] Since the tax assessment in this case was made on April 25, 1984, and the suit was initiated on April 20, 1989, one year before

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[2] The additional grounds urged by petitioners in support of the petition assert no conflict and require no response.

[3] Section 6502(a) of the Internal Revenue Code has recently been amended to provide a ten-year limitations period for bringing suit. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11317, 104 Stat. 1388-458. The new limitations period applies to taxes assessed after November 5, 1990, and to taxes assessed on or before that date if the six-year period had not expired as of that date. *Ibid.*

the six-year period expired, the courts below correctly concluded that the claims of the United States in this case are not time-barred.

Relying on *United States* v. *Vellalos*, 780 F. Supp. 705 (D. Haw. 1992), appeal pending, No. 92-15491 (9th Cir.), petitioners contend (Pet. 20) that the period for bringing this tax collection suit is not six years from the date of assessment, as provided by Section 6502 of the Internal Revenue Code, but is six years from the date of the conveyance, as provided by the Indiana statute of limitations concerning fraudulent conveyance actions. In *Vellalos*, the district court held that a fraudulent conveyance claim brought by the United States was barred by Hawaii's four-year statute of limitations on actions based on fraud. The court recognized the established rule that the claims of the United States are not subject to state statutes of limitations, but distinguished that rule on the theory that the four-year period provided by the Hawaii statute was not a *limitations* provision, but was instead an element of the underlying cause of action. 780 F. Supp. at 707. The Ninth Circuit cases on which the *Vellalos* decision is based have distinguished *United States* v. *Summerlin* and have applied state limitations provisions to bar claims of the United States on the theory that the requisite statutory period was not a statute of limitations, but was an essential element of the underlying state-law claim. See *United States* v. *California*, 655 F.2d 914 (9th Cir. 1980); *United States* v. *Hartford Accident & Indem. Co.*, 460 F.2d 17 (9th Cir.), cert. denied, 409 U.S. 979 (1972).[4]

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[4] See also *United States* v. *California*, 932 F.2d 1346 (9th Cir. 1991), cert. granted on other issues, 113 S. Ct. 50 (1992) (presenting question whether the federal common law claim of the United States for money had and received as a means of recovering unlawful state taxes is subject to compliance with state administrative claim procedures and state statute of limitations).

Petitioners contend (Pet. 23) that the period of limitations provided by Section 34-1-2-1 of the Indiana Code similarly forms an element of, rather than limiting the commencement of, the substantive cause of action for fraudulent conveyances. Petitioners therefore claim that the state statute bars the action brought by the United States in this case. The Indiana statute, however, establishes a traditional limitation on the period in which suit may be brought; it is not an element of the underlying claim for relief under state law. See *Forth* v. *Forth*, 409 N.E.2d 641, 644 (Ind. Ct. App. 1980) (the statute of limitations runs from the date "the cause of action for fraud accrues"). The cases on which petitioner relies are therefore inapposite.

2. In any event, the decision in this case rests on grounds that are independent of the Indiana fraudulent conveyance statute. The district court correctly held that the taxpayers remained the owners of the residence—and that the United States was therefore permitted to foreclose on the property to satisfy their tax debt—because the trust to which the property purportedly had been transferred was invalid (Pet. App. A28). Indiana law imposes several formal requirements for creation of a valid trust. In particular, the terms of the trust must establish "the identity of the beneficiary." Ind. Code Ann. § 30-4-2-1 (Burns 1989 & Supp. 1992). The trust documents in the record of this case, however, failed to designate any beneficiaries of the putative trust (Pet. App. A3).[5] Under Indiana law, the omission of

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[5] Petitioners claim (Pet. 29) that the district court improperly refused an *in camera* inspection of documents which they assert would show the existence of beneficiaries. As the district court correctly held, however, it was the Templetons' failure to offer the putative trust agreement as evidence, not the court's failure to accept it, that resulted in omission of those documents from the record of this case (Pet. App. B4-B5).

designated beneficiaries might not alone compel invalidation of the trust.[6] *Meyer* v. *Northern Indiana Bank & Trust Co.*, 490 N.E.2d 400, 402-403 (Ind. Ct. App. 1986). But the court retains equitable power to invalidate a trust when the trust was improperly formed or other circumstances surrounding its creation so warrant.[7] Ind. Code Ann. § 30-4-3-30 (Burns 1989). See *Apple* v. *Apple*, 274 N.E.2d 402, 408 (Ind. App. 1971) (the bases for declaring a trust invalid "have never been expressly enunciated in full but rather left to the courts in the exercise of their equity powers"). In this case, the fact that the trust was designed to accomplish a fraudulent purpose (see page 3, *supra*), in combination with formal defects such as the absence of designated beneficiaries, combined to justify the court's determination that the trust was not valid under Indiana law. This fact-bound application of state-law principles, concurred in by both of the courts below, does not

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[6] A court may determine that a resulting trust exists if one of the requirements for an express trust is not satisfied. *Pavy* v. *Peoples Bank & Trust Co.*, 195 N.E.2d 862, 867 (Ind. App. 1964).

[7] Petitioners cite Article I, § 10, Cl. 1 of the United States Constitution, the Tenth Amendment to the United States Constitution, and Article I, § 24 of the Indiana Constitution for the assertion that the prohibition against impairing the obligation of contracts prohibits a district court from voiding a fraudulent conveyance based on a contract made in Indiana (Pet. 47-55). This contention is wholly without merit. This impairment of contracts argument has been rejected in the specific context of creditors challenging fraudulent conveyances, *Bertsch* v. *McBride*, 58 F.2d 799, 801 (6th Cir. 1932), and federal and state courts have repeatedly voided fraudulent conveyances in suits initiated by third parties. See, *e.g.*, *Eyler* v. *Commissioner*, 760 F.2d 1129 (11th Cir. 1985); *Nader* v. *Commissioner*, 323 F.2d 139 (7th Cir. 1963); *Jackson* v. *Russell*, 533 N.E.2d 153 (Ind. Ct. App. 1989), cert. denied, 494 U.S. 1004 (1990).

warrant further review. See *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317-318 n.5 (1985).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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